



T H E S H E R I F F S C A S E.

Whether, and How they may lawfully Qualifie
themselves for their holding the Office, ac-
cording to the Act for *Corporations*?

IN this Act there are two things imposed; an Oath, and a Renunciation of the Covenant: And we must lay down this * Rule at first, That all Impositions of our Superiours must be taken in the sense and meaning of those that Impose them (there need be no scruple else in submission to any thing enjoined.) The bottom is this, because the *Law* is the *Will* of the *Lawgiver*, and it is the *Lawgiver's Meaning*, which is his *Will*, howsoever the words of a *Law* is expressed. The Parliament here (we know) is the *Lawgiver*, and this *Oath* then must be *taken*, and *Renunciation made* in the sense and meaning of the Major part of the Parliament which passed the Act: Where we must also premise thus much, that it is not for any Sheriff, Alderman, or other person upon whom this *Oath* is Imposed, (for we must begin with *That*) to put a *meaning* of his *own* upon it, which is to be taken only in *Theirs* that passed the Act; but to consider verily what he believes to *that Meaning*, which is indeed the *Lawgivers*. Not to determine neither and say, *This is the meaning*, but to be able to say, *I believe this to be their Meaning*, which is necessary to every one that takes it, to determine for himself, that he may act in Faith in what he does.

* To this Rule there is a double Extreme. The one, is of those who think a man must take every Imposition in the strict literal construction, &c. can submit to it no otherwise. The other, is of such who suppose that if

a man can frame any interpretation of his *own* that is but reasonable, he may take the words in that sense and be satisfied. The *first* of these is so rigid, that there is nothing can be imposed, but we shall strain at it; and the *last* so loose, that nothing can be imposed, but we shall swallow it. The true Medium is this, we must sit down and consider what we believe to be the meaning of the *Lawgiver*, and if we can submit to an Imposition in that sense or meaning which we believe *theirs*, we must do it; but if we believe their sense to be such, as we cannot take it in *that sense*, we must forbear it and suffer.

We must add, That when we say the Parliament is the *Lawgiver*, we understand by the Parliament, the King, Lords and Commons; and consequently, that the sense of the Law, (and so of this Oath) must be always that sense wherein the *House of Lords* did concur with the *House of Commons*, and the King with both. If there be any sense therefore of an Imposition which may be supposed to be the meaning of the *King*, and not of the *Houses*, or of *One* of the *Houses*, and not the *Other*; or a *lesser* part of *either* House, and not the *majority* of *both*, that sense must be still lookt on as too narrow, and ought not to scruple the Conscience, the true sense obliging the *Subject*, being the *concurrent* sense of the *King*, *Lords* and *Commons*, who as assembled joyntly to this end of Legislation, not *one* without the *other*, but all *three* together, as *One Corporation* (and otherwise) are the *Lawgiver*.

Neither is this sense to be collected from the first floating apprehensions of any one that moves a matter in the House, but from the digested thoughts of both Houses, after a mature debate, and the thing hath thrice passed in them both, so that no sense of any Imposition but that which is agreeable to Reason, and more especially to the fundamental Laws of the Constitution, must be received as the Meaning of a Parliament, the Reason being, because the nature of the *Constitution* is such, as it cannot be infringed by an Act or Law for the *Administration*; which is a Note to be laid in here, that by-and-by will be needful. Thus much therefore farther, and no less being premised, we proceed.

By taking Arms, Let us suppose the Sheriffs believe the Parliament meant the raising an Army, or War; and by the *King*, the King's own Sacred Person, as there is nothing else indeed

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* The only objections here which are of weight, may be reduced to two Cases. One is the Case

of *Private* violence, as suppose a Prince should go to ravish a Virgin, and she catches up the next Weapon or Instrument to defend herself. In this Case, or the like, we answer, this Defence is not to be accounted *taking Arms* in the sense of this Act. The other is a Case of *Publick* violence; as suppose a Prince should go about to alienate his Kingdom, or ruine his Country, or the like. We answer, we are not for all that to return violence upon his Person; and as for his Officers, Followers, or Armies, the solution must be attended in the next Clause of the Oath.

can be meant: And we can see no * Objection which may not be answered from this Little, in the first Clause of the Oath. *I A. B. do swear, That I hold it unlawful to take Arms against the King (or his Rightful Government) upon any Pretence whatsoever.*

If *David's* heart smote him for cutting off but *Saul's Skirt*, when he was actually in Arms to defend himself against *Saul's Forces*, onely because he was the *Lord's Anointed*. It is not in this first Clause (any one may conjecture) but in the ensuing, where the Chief Scruples against the Oath are to be removed.

In the second Clause, *By those Commissionated by Him*, let us suppose they believe the Parliament meant, and could mean, no other than such as have a due Authority from Him, and exercise it onely according to Law: And so long as the *King's Authority*, and *such Commissions* are one, (or the same,) we can see no more difficulty remaining in the second Clause, than in the former: *And I do abhor* (that is, disown or disclaim) *that Trayterous Position, of taking Arms by His Authority against His Person, or against any Commissionated by Him in the pursuit of such Commissions*: That is, *Legally* Commissionated by Him, in the *Legal* pursuit of such Commissions.

It is not to be imagined that the Parliament, when they passed this Act, (that is, the *Major* part of them) should design the setting up an Arbitrary Government in the Nation: But if the meaning of *those Commissionated by Him*, be otherwise than thus, they must design it. An *Arbitrary Power*, as soon as they passed this Clause in any Act, must be accounted to *Commence*. A thing most absurd to be believed, and in the contrary belief whereof the most scrupulous man (we thank God) may resolvedly take this Oath.

In the third Clause, we distinguish an *Endeavour* to change or reform any thing in Church or State, which we think conducive to the good of the Nation in a Parliamentary way onely, as is allowed by the fundamental Law and Course of the Realm, from an *Endeavour* in any other way that is not warranted by the same, to wit, in a seditious way, or in such manner as they did in the late Times, when they endeavoured the Extirpation of Prelacy by force against and without the King's consent in Parliament, (which may be believed to be the assured sense of the Ma-

* That the meaning of the Parliament in this Oath and Declaration was, that we should declare it to be unlawful for us to do that now, which they did then

(or as of late hath been practised, to use the words of the Militia Act,) we are out of doubt; but whether in the peculiar case of those times there was any thing might be lawful, or any way justifiable to be done then (when the King and Houses (the One Corporation) were divided, and he had passed an Act not to Dissolve them without their consent, which is a case never like to happen any more, and so no danger to put it) which now is certainly unlawful, is a question we have nothing to do with, and interpose nothing to offend any.

majority in the Houses, when they passed this Act,) and so long as to do so * now, may be acknowledged (as assuredly) to be unlawful, and what ought to be disclaimed, the offence must be over in the last part of the Oath also: *And that I will not endeavour any Alteration of Government either in Church or State; to wit, in any manner not warranted by the Constitution of the Land, or any otherwise, than by Act of Parliament.*

We confirm this Exposition with one clear Reason. The great thing intended by this Oath, is the preservation of the Government in the fundamental Constitution against all Alteration. But the Constitution of our Government being such in the foundation, that whatsoever is needful or convenient to be altered, it may be proposed to that end in Parliament: to take away that Liberty which is universally radicated in the whole Nation in order thereunto, were a piece of the greatest Alteration that could be, and consequently never to be understood as intended by the Lawgiver.

As for the *Solemn League and Covenant* (the Renunciation* whereof is the second thing here imposed,) it is an Oath so long since in Being, that, 'tis two to one but both these Sheriffs (as well as the last) never took, so that they may safely say, there lies no obligation upon them at all from it; And as for others that did, we humbly conceive, that being taken in its *Complex Consideration*, as it was pressed and used at that time, for the engagement of People to the Extirpation of the Bishops, and change of Church-Government without the King, against His Consent, and Publick Declarations, and by Force, it must needs be *Unlawful*, and could not bind any body to do so: and

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and consequently we trust, that such Gentlemen shall not offend God, or any good Men, if they farther subscribe this Declaration, which is also required: *I A. B. do declare, That I hold there lies no Obligation on me, or on any other Person, from the Oath commonly called, The Solemn League and Covenant, to endeavour any Change or Alteration of Government either in Church or State; And that the same was in it self an unlawful Oath, and imposed on the Subjects of this Realm, against the known Laws and Liberties of the Kingdom.*

By some of which last words it appears, that this Oath was framed for the *Subjects of the Realm*, (we say, that this Oath was, in the meaning of the Imposers of this Declaration, *the Subjects Oath*, and consequently by the words, *or any other Person*, they must mean, *or any other Subject*;) which appears also manifestly in the Preamble of that League, *We, such and such under the King*. There is one part of it moreover expresse for the *preservation of the King*; we do suppose therefore, that though an Oath to the same main effect, or one like it, was imposed on *this King* by the *Scots*, that Oath must be conceived *another* than this, and not the very *same*, being not so in every point, but an Oath indeed (as they call'd it) *to confirm the Covenant*, when He offer'd this very Exception against taking the Covenant it self, because it was an Oath for the Subjects only. And this being enough to save the Conscience in *one chief* Scruple, (and chiefest one,) we will gather up again what is said before into one Argument (which we fix upon) for a fuller satisfaction in regard to *all others*. To own the King and his Authority in the same Oath, and yet to swear to change the Government *without His Will*, and *against it*, is (we think) *in it self unlawful*. Such an Oath was the Covenant; and *Quod* unlawful, it must be unobligatory.

And what indeed shall now hinder these Sheriffs to subscribe, That there lies no obligation upon them, or others, from the Covenant, *to endeavour any Alteration of Government* in that sense as they swear before that they *will not endeavour any*, in the third clause of the Oath preceding? For so long as the meaning of the Lawgiver is no other than *That* which is made to appear there, upon the account given, and the *Endeavour* which is here, and which is there, is the same out of doubt, we do not see but the Reason which does satisfy any Man upon the Point about taking the Oath, must be sufficient for the Declaration also. In short, *There lies no obligation upon any from this Oath, to do as they swear it; It is in it self unlawful to do so; & the Imposition of it was illegal.*

In the Sacred Story concerning *Rahab* and the *Spies*, it appears that no body can be engaged any farther by an Oath, than what he agrees or consents to in the taking it. Where he declares before-hand he will not be bound, he is free. We cannot tell how much *larger*, or how much *narrower a compass* others may draw to themselves from that *Instance*, than we; but this we will say, That upon the supposal of either of these Sheriffs making a Declaration for himself (if this Paper will not serve) when he takes the Oath, and subscribes the Declaration enjoyned, that he does it in this Meaning, which we have all along exprest, supposing it true, (and with these explanatory limitations to the *Meaning*, if indeed in any thing it be otherwise,) we do apprehend that his Conscience may receive satisfaction thereby in its compliance with the *Law* in these *Impositions*, which he cannot refuse, without the refusal also of his *Duty*.

After this, there is an Act of Parliament, intituled, *An Act for preserving His Majesty*, (*An. 13. Car. 2. Regis c. 1.*) wherein this Covenant is declared peremptorily to be *unlawful* and *null*, that gave *one* of the Sheriffs last year a *peculiar* satisfaction. We argue from thence thus: As we find in the Law of *Moses*, when a Wife or a Daughter made a Vow, if the Husband or the Father disallowed it, that Vow was * rescinded. So may we apprehend the very same Reason to be here in regard to this League or Covenant: For the Subject being (*quoad hoc*) not *sui juris*, but under the power of the Prince, and much more under the most supreme and absolute Authority of Parliament, and the late King declaring still against this Oath at the very time, and a Parliament, since the return of this King as soon as it could be done, having passed an Act on purpose for dissanulling the same, there appears no difference between the Cases, but that the obligation of this League, as well as of those Vows, must give place to such an Authority overruling it: And more especially (we must add) because the Alteration of Government (the sole matter in concern) does belong to the cognizance of the Higher Powers, (we mean a Parliament) and is not the business of any private person, unless in order to procuring *their* Consent and Establishment.

does (as we suppose) dissolve the Obligation, though else it could not be dissolved by the Authority of a Superiour only.

If this reasoning now shall satisfy these Sheriffs, and yet be unsatisfactory to another person, let us but warn such a man that he does nothing after their *Example*, unless he be satisfied with our *Reasons*, and we care not. If our Argument satisfy any man, and he follows their pattern, we edify him; if they do not, and he follows his own judgment, we do him *no hurt*. It is a man's own Conscience is the Discerner to him of his Duty, and he is not to regard another Mans, any farther than to avoid Active Scandal.

* We lay down this Rule here, that if any man makes a Vow to God, which he cannot perform without the consent of another, who is his Superiour, (and much more if through him it must be done,) if that Other Reclaims the thing as soon as he hears of it, the Authority of God by the equity of this Law given by *Moses*,

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We do not mean it, as if every man therefore should *lean onely to his own understanding*, but rather take *advice*, and that which is the most *serious* and *proper* he can get. For our parts, we

* This Book here cited was Printed 1680. and is sold by Tho. Symmonds at the Printer Arms in Ludgate-street.

have no more to offer or say, but that we were particularly beholding for this which is said, to a Book, intituled, * *A Peaceable Resolution of Conscience touching our present Impositions*. In which Book the Readers (that please) will find the Rule by which we are to walk, under such Injunctions of our Superiours as these, to be such, or so set out, as that according to the persuasion of a man's mind about the same, both he that *Conforms* to them, and he that *Cannot*, may see reason to retain a fair Opinion of one another, and to hope that neither of them depart from a good Conscience in what they do.

This is the Moderation we desire our selves, and these Sheriffs to follow, In our Loyalty to our Sovereign, In our Love to our Country, and In our Religion to God.

The Reasons for Printing this Paper are these.

1. To take the Oath, and subscribe the *Declaration* in the literal strict Construction, appears, in our judgment, unlawful; and consequently, unless by some means or other the sense be made publick in which a man does take them, (and that sense also be justified, or at least be justifiable) he must forbear.

2. The *Declaration* is against the Consciences of the *Nonconformists* in general, insomuch as some men who took the *Oath*, cannot subscribe the *Declaration*; and for any Conscientious men therefore to do it now, and not declare their Reasons of Satisfaction, were to sin against the *Brethren* if they own them, or to disclaim them.

3. By doing this, a man shall give occasion to others to follow his example, and if he present them not his Grounds or Reasons, Those that follow shall do it without the same Reasons, and through his knowledge shall such perish. But when ye sin so against the *Brethren*, and wound their weak Consciences, ye sin against Christ.

4. The Episcopal Party are generally apt to think the *Nonconformists* to be Hypocrites and Knaves, and say, These men refuse these Injunctions out of humor, or for their profit, but they will swallow them as well as we for Honour, or for Advantage. If any considerate Men therefore shall Swear and Declare, and not give us some rational Account of what they do, (or some others for them) they must not only wrong themselves, but the whole generation of such Men, and cause the Name of God (in regard to them) to be blasphemed.

5. It pleased Providence to call two Persons to the Office the last year, whereof one of them at least (if not both) were the better inabled (to speak modestly) if not quite, to hold the same upon the satisfaction which is couched in this Paper; and if it be of great Concern at this time that such Men do hold Sheriffs, who are willing to deny their own Advantage, (not seek it) for the sake of the Publick: It is yet of greater concern that by the publishing our grounds for their satisfaction. Many in distress about the Oxford Act, may be relieved, and a way opened for Many of the like substantial Citizens of known Piety, Loyalty and Ability, to be brought into Corporations, throughout the Nation, to the great service of the King and Kingdom.

To conclude, We have here laid down the Rule concerning Humane Impositions, and applied it to this Oath and Subscription. If any man is persuaded in his Conscience that the meaning of the Lawgiver was no more than thus he may submit to them both, and make no stand: but if he believes their meaning was otherwise (or doubts that it was more than thus,) he cannot Swear or Subscribe, but with Limitations; and he must declare those Limitations or Forbear. But if he shall Swear or Subscribe (supposing him one that doubts) with a Declaration in the words before written [That he does it, in the meaning which is here expressed, supposing it true, and with these Explanatory Limitations to the meaning, if in any thing indeed it be otherwise,]

* In Mr. Baxter's Funeral Sermon upon that late holy Citizen Mr. Ashurst, we take notice of this passage: Some may think that he wanted a Publick Spirit, because he avoided being a Magistrate, and payed his Fine rather than take an Alder-

mans Place; but it was only to keep the Peace of his Conscience—Yet I never heard him speak uncharitably of those Worthy Men who do what he refused, supposing that they, in words or writing, declared as openly as they swore and took the Declaration, that they took it but in such or such a lawful sense; though he could not do so himself.